

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105-3725

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Signature Confirmation

REQUEST #143893

CLIENT ID # █

AU ID# █

ADMINISTRATIVE DISQUALIFICATION HEARING

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

The Department of Social Services (the "Department") requested an Administrative Disqualification Hearing ("ADH") to seek the disqualification of █ (the "Defendant") from participating in the Supplemental Nutritional Assistance Program ("SNAP") for a period of one (1) year. The Department alleged that the Defendant committed an Intentional Program Violation ("IPV") as a result of the Defendant's SNAP trafficking. The Department seeks to recover the overpaid SNAP benefits of \$510.22. This is the Defendant's first IPV offense in the SNAP program.

On █, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") notified the Defendant of the initiation of the ADH process via certified mail. The notification included the hearing summary, an outline of Defendant's rights in these proceedings and advised of the hearing date

On █, U.S. post office left notice of the certified mail at the Defendant's address. The Defendant did not claim the certified mail.

On [REDACTED], in accordance with sections 17b-60, 17-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an Administrative Disqualification Hearing. The Defendant was not present at the hearing. The Defendant did not show good cause for failing to appear.

The following individuals were present at the hearing:

William Carrasquillo, Investigator, Department's Representative
Maureen Foley-Roy, Hearing Officer

STATEMENTS OF THE ISSUES

The first issue to be decided is whether the Defendant committed an IPV of the SNAP program.

The second issue to be decided is whether the Department's proposal to recoup a SNAP overpayment is correct.

FINDINGS OF FACT

1. On [REDACTED], the United States Department of Agriculture, Food and Nutrition Services, SNAP Program ("FNS") charged the [REDACTED] located at [REDACTED] with trafficking in SNAP. (Exhibit 8: USDA letter dated [REDACTED])
2. On [REDACTED], the United States Department of Agriculture, Food and Nutrition Service, SNAP division, found that the [REDACTED] was trafficking in SNAP benefits and permanently disqualified the [REDACTED] participating in SNAP. (Exhibit 9 : Letter from the USDA dated [REDACTED])
3. There are no shopping baskets or shopping carts at the [REDACTED] is a gas station with a store and a restaurant. There is a car rental space on the property. (Exhibit 10: FNS form for General Store Information)
4. The [REDACTED] is a gas station and contains minimal groceries. In addition to the prepared food, the [REDACTED] sells milk, cheese, and bread. It has a deli and prepared food section. There is seating and microwaves available. (Exhibit 10)

5. The Defendant was a recipient of SNAP benefits through [REDACTED]. Her household consisted of herself and two minor children. (Department Investigator's testimony)
6. From [REDACTED] through [REDACTED] the Department deposited \$450 in SNAP benefits in the Defendant's Electronic Benefits ("EBT") Account. (Exhibit 9: Benefit History)
7. On [REDACTED] am the Defendant's EBT card was used for a purchase of \$35.12 at the [REDACTED]. On the same day, at 12:37 pm, the Defendant's EBT card was used for a \$24.69 purchase. (Exhibit 5: Recipient Transaction History)
8. On [REDACTED] am the Defendant's EBT card was used for a purchase of \$25.69 at the [REDACTED] (Exhibit 5)
9. On [REDACTED] am the Defendant's EBT card was used for a purchase of \$56.27 at the [REDACTED]. (Exhibit 5)
10. On [REDACTED] am the Defendant's EBT card was used for a purchase of \$46.84 at the [REDACTED]. (Exhibit 5)
11. On [REDACTED] am the Defendant's EBT card was used for a purchase of \$45.23 at the [REDACTED] (Exhibit 5)
12. On [REDACTED] am the Defendant's EBT card was used for a purchase of \$35.74 at the [REDACTED] (Exhibit 5)
13. On [REDACTED] am the Defendant's EBT card was used for a purchase of \$40.25 at the [REDACTED]. (Exhibit 5)
14. On [REDACTED] at 9:30 am the Defendant's EBT card was used for a purchase of \$56.12 at the [REDACTED] (Exhibit 5)
15. On [REDACTED] am the Defendant's EBT card was used for a purchase of \$58.47 at the [REDACTED]. (Exhibit 5)
16. On [REDACTED] at [REDACTED] the Defendant's EBT card was used for a purchase of \$60.62 at the [REDACTED]. Later on [REDACTED] pm, the Defendant's EBT card was used for a purchase of \$23.18 at the [REDACTED] (Exhibit 5)
17. On [REDACTED], the Department sent the Defendant a letter advising that it had evidence that the Defendant had trafficked in SNAP benefits. The letter detailed the charges and the penalties. (Exhibit 2: Letter dated [REDACTED])

18. On [REDACTED], the Department sent the Defendant a Notice of Prehearing Interview and Waiver of Disqualification Hearing forms. The notice advised the Defendant that she was overpaid \$510.00 in SNAP benefits and that she was required to repay those benefits. (Exhibit 3: Notice of Prehearing Interview form and Exhibit 4: Waiver of Disqualification Hearing)
19. The Defendant did not return the Waiver of Disqualification hearing form. (Department's Investigator's testimony)
20. On [REDACTED], the Defendant and the Investigator spoke on the telephone. The Defendant told the Investigator that there is a cafeteria of sorts at the [REDACTED] and the Defendant purchased prepared meals to eat there. The Defendant told the Investigator that she was unaware that SNAP benefits could not be used to purchase prepared food. (Department Investigator's testimony)
21. There is no evidence in the record that the Defendant was aware that prepared food and meals were not allowed for purchase in the SNAP program. (Hearing Record)
22. The Defendant has no previous intentional program violations. (Exhibit 8: Electronic Disqualified Recipient System)
23. On [REDACTED] [REDACTED], the Department requested an administration disqualification hearing.
24. On [REDACTED], the hearing notice and Department's summary was sent to the Defendant via certified mail. On [REDACTED], notice was left with the Defendant. (Hearing Officer's Exhibit 1: USPS Tracking information)
25. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Department requested an administrative hearing on [REDACTED]. This decision is due not later than [REDACTED] [REDACTED] and therefore is timely.

CONCLUSIONS OF LAW

1. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the SNAP program.

2. Section 17b-88 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to recover any public assistance overpayment and take such other action as conforms to federal regulations, including, but not limited to, conducting administrative disqualification hearings.
3. Title 7 of the Code of Federal Regulations (“CFR”) § 273.16(e) provides that the State agency shall conduct administrative disqualification hearings for individuals accused of Intentional Program Violation.
4. The Department’s Uniform Policy Manual (“UPM”) is the equivalent of a state regulation and, as such, carries the force of law.” *Bucchere v Rowe*, 43 Conn Supp. 175 178 (194) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d712(1990)).
5. Uniform Policy Manual (“UPM”) § 7050 provides that in the Food Stamp program the Department conducts Administrative Disqualification Hearings in certain instances of alleged intentional recipient error as an alternative to referrals to the court system for prosecution. Individuals, who are determined to have committed an intentional recipient error are subjected to recoupment requirements and, in some cases, are disqualified.
6. UPM § 7050 outlines the Administrative Disqualification Hearing process.
7. 7 CFR § 271.2 (1) and (2) provides in part that the definition of eligible foods includes in part is any food or food product intended for human consumption **except alcoholic beverages, tobacco, and hot foods and hot food products prepared for immediate consumption** or seeds and plants to grow foods for the personal consumption of eligible households. (Emphasis added)
8. 7 CFR § 271.2 provides in part that the definition of trafficking includes the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.
9. 7 CFR § 273.16(c) defines intentional Program violation as follows:
For purposes of determining through administrative disqualification hearings whether or not a person has committed an intentional Program violation, intentional Program violations shall consist of having **intentionally**:(1) made a false or misleading statement, or

misrepresented, concealed or withheld facts, or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute relating to the use, presentation, transfer, acquisition, receipt, or possession of Food Stamp coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). (Emphasis added)

10.7 CFR § 273.16(e)(6) defines the criteria for determining intentional program as follows: The hearing authority shall base the determination of Intentional Program Violation on clear and convincing evidence which demonstrates that the household member(s) committed and **intended to commit**, an Intentional Program Violation. (Emphasis added)

The Department did not provide clear and convincing evidence to demonstrate that the Defendant intended to commit an intentional program violation.

The Department is incorrect to seek the disqualification of the Defendant from the SNAP program for a period of one year.

The Department cannot require recoupment from the Defendant for an unintentional overpayment because there is no evidence as to which of the Defendant's transactions were used to purchase prepared foods/ineligible items.

DISCUSSION

Established at this hearing is the fact that the [REDACTED], where the Defendant conducted some of her SNAP transactions, was permanently disqualified from participating in the SNAP program due to trafficking in SNAP benefits. The evidence presented at the hearing indicates that [REDACTED], with its limited inventory and lack of shopping carts or even baskets, is a gas station with a small store and restaurant attached. The Defendant told the Department's investigator that some of the transactions in question were for restaurant meals at the [REDACTED]. She told the investigator that she was unaware that prepared foods are not "eligible foods" as determined by the regulations. Prepared food is still food and it is credible that the Defendant would believe that prepared food could be purchased with SNAP benefits. There is no evidence in the record that the Defendant was aware of such regulations and therefore the Defendant cannot be found guilty of an intentional program violation.

There are specific provisions that inadvertent or unintentional household errors are considered claims subject to repayment. However because there is no evidence as to which of the Defendant's SNAP transactions were for the purchase of "ineligible

items” as defined by the regulations, the Department cannot recoup from the Defendant for such transactions.

DECISION

The Defendant is **not guilty** of committing a first intentional program violation in the SNAP program for trafficking of SNAP benefits and she is not disqualified from the program.

The Defendant **is not obligated to make restitution** as the amount of benefits used for ineligible items was never established.



Maureen Foley-Roy
Hearing Officer

- CC: OLCRAH.QA.DSS@ct.gov✉
William Carrasquillo, DSS Investigator, DSS R.O#30, Bridgeport

RIGHT TO APPEAL

The defendant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45 day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the defendant resides